UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 698

Case No. 748: HUDA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Francis Spain; Mr. Mayer Gabay;

Whereas, on 9 September and 11 October 1992, 11 February 1993 and 17 May 1993, Kazi Tamjidul Huda, a former staff member of the United Nations Development Programme, hereinafter referred to as UNDP, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 May 1993, the Applicant, after making the necessary corrections, again filed an application containing pleas requesting the Tribunal:

> "1. To declare that the Applicant is NOT LIABLE for the charges contained in the letter written by the Resident Representative, UNDP, Bangladesh dated 14 April, 1991.
>
> 2. To declare that the Administrator, UNDP, has committed a serious error of fact and law apparent on the face of the record thereby rendering his decision null and void.
>
> 3. To declare that the decision of the Administrator, UNDP is flawed by gross/substantive miscarriage of justice.
>
> 4. To pass an order or take such measures as would (i) reinstate the Applicant [in the position] he occupied prior to his wrongful separation from service; and at the same time

(ii) compensate the Applicant for a sum equivalent to US$217,000 (U.S. dollars two hundred and seventeen thousand only) for loss already suffered.

5. In the alternative to pass such an order or take such measures (i) to appoint the Applicant to a position outside Bangladesh which would be equivalent to the position which would be due to the Applicant had he not wrongfully been separated from service; (ii) [to] compensate the Applicant for a sum equivalent to US$217,000 (U.S. dollars two hundred and seventeen thousand only) for loss already suffered.

6. That, in the further alternative, the Administrative Tribunal of the United Nations take such measures or pass such orders as would adequately compensate the Applicant for a sum equivalent to US dollars $2,013,000 (U.S. dollars two million thirteen thousand only).

..."

Whereas the Respondent filed his answer on 22 November 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of the World Food Programme (WFP) on 1 August 1977, as a Field Officer in Bangladesh, on a fixed-term appointment of three months. He served on further fixed-term appointments until 1 November 1986, when he was promoted to Senior Field Officer and granted a probationary appointment. On 1 May 1987, his appointment became permanent. On 12 July 1992, the Applicant was separated from service on grounds of misconduct.

According to the record, on 20 March 1991, in a telephone conversation with officials of the WFP Operations Division, the District Relief and Rehabilitation Officer (DRRO), Faridpur, complained about the Applicant's activities in Faridpur. On 24 March 1991, the WFP Director of Operations requested the Head of the Coordination and Programming Unit (CPU), Food for Work Project (FFW), WFP, Dhaka to conduct a preliminary investigation. On 8 April 1991, the Head of CPU, FFW submitted an Inquiry Report to the Director of Operations. The report found, inter alia, that the Applicant had taken bribes in 1989 and 1991 during visits to

Faridpur, that he had "misbehaved" during his 1989 visit and had "wasted WFP time and resources." It also found that he had "threatened to cancel [the] next year's FFW allocation ..." Statements from three Project Implementation Officers (PIOs) affirming that they had given money to the Applicant were attached to the report.

On 14 April 1991, the UNDP Resident Representative informed the Applicant that "serious allegations" had been made against him which "if confirmed by an enquiry would constitute a serious case of misconduct." He also informed the Applicant that "three PIOs in different statements made in the presence of DRRO ... are charging you of having extracted money from them in 1989 and 1991 under the threat of cancelling ongoing schemes or future ones." He requested the Applicant "to give your version of the matter, to suggest other persons from whom enquiry might be made and to call witnesses if you so wish." At the same time, he suspended the Applicant from duty until further notice.

Also on 14 April 1991, the UNDP Resident Representative appointed a Commission of Enquiry "to investigate accusations of serious misconduct" against the Applicant. The Commission consisted of the Deputy Resident Representative, a UNDP Programme Officer, an Associate Programme Officer, a Senior Programme Officer and a Project Officer from WFP. In a cable of the same date, the Resident Representative informed the Director, Division of Personnel, UNDP, of the allegations that had been made and that he had set up a Commission of Enquiry to investigate them.

In a Note for the Record, dated 27 April 1991, two members of the Commission of Enquiry recorded a visit they had made to Faridpur on 25 April 1991, having been informed that "some pressure was being brought to bear" on the three PIOs who had made statements against the Applicant. They noted that the three PIOs "re-confirmed their earlier written statements to be true," although one of the three PIOs "stated that he would like to withdraw his statement." When

questioned, he stated that he had been told by other PIOs that he should not have made the statement and should withdraw it because the Applicant was "the only person in WFP who is supporting FFW programme to remain with the Ministry of Relief and the PIOs." All three PIOs said they had made the statements "on the understanding that the contents will be known only to DRRO Faridpur and to WFP office". They "expressed their concern that these have been leaked to others including some people in the Directorate of Relief which might have bearing on their jobs."

According to the record, on 29 April 1991, the PIO, Madhukhali, one of the three PIOs who had made statements against the Applicant, met with three members of the Commission of Enquiry. He confirmed the contents of the statement he had made earlier on the Applicant's acceptance of money, but he asked to withdraw the statement as he had been under the impression that it had not been intended to be used as a complaint or accusation against anyone. He was reportedly "visibly worried about any future impact that such a statement may have on his job situation and any harassment/ inconveniences that he may be subjected to in future."

In a letter to the Resident Representative, UNDP, dated 29 April 1991, the Applicant responded to the charges against him, denying any "misbehaviour" in 1989 and noting that any complaints about his behaviour should have been made earlier. With regard to the three PIO statements, he asserted "these statements appear to have been collected deliberately." He noted as "a very striking feature of all the three statements" that they were all of the same date and that "the entire process was systematically conducted ... on the same day." The Applicant also suggested that the Commission contact several colleagues and former supervisors whom he named.

In a letter dated 30 April 1991, the Deputy Resident Representative, as Chairman of the Commission of Enquiry, requested the Applicant to meet with the Commission, "to enable the Commission to interview you in person on the charges as well as allow you to

present the case from your point of view." In a reply dated 2 May 1991, the Applicant expressed "reservations regarding the Commission." He noted that the Commission included an Associate Programme Officer junior to him and questioned whether this was appropriate. He also questioned the inclusion of three members of the Commission from WFP, the agency which had brought the charges against him. He requested, "in order to ensure a fair enquiry", that the Chairman "reconstitute the Commission in light of [these] observations."

On 2 May 1991, the Commission of Enquiry interviewed the WFP staff members whose names had been put forward by the Applicant. According to the record, four of the five staff members described the Applicant as "generally friendly and cordial" and "cooperative and efficient". They also stated that they had knowledge of his "alleged misbehavior with the field staff, particularly the PIOs." The fifth staff member had "reportedly heard nothing adverse against [the Applicant]."

On 7 May 1991, the Applicant met with the Commission of Enquiry. In reply to the charges, he maintained that he was innocent of them, that they were fabricated, and "personally motivated". On 16 May 1991, the Applicant submitted, to the Chairperson of the Commission, statements of retraction from two of the three PIOs who had previously signed statements concerning the Applicant. The statement from the PIO, Modhukhali, dated 19 April 1991, reads as follows:

> "On last 27.3.91 ... WFP Field Officer ... and the [DRRO] told me ... that [the Applicant] was a very bad man and he was engaged in activities which were against the interests of the PIOs. They told me to give statement against [the Applicant]. As a man considered to be working against our interests, I gave a statement against [the Applicant], which is not at all true."

The statement from the PIO, Boalmari, also dated 19 April 1991, reads as follows:

> "On last 27.3.91 ... one WFP Field Officer came to our Office and said that [the Applicant] was working against the interests of the PIOs. He told me to give a statement against [the Applicant]. The statement which I gave against [the Applicant] considering him to be a man against our interests is not at all true."

In its report, dated 19 May 1991, the Commission of Enquiry noted that attempts had been made "to remove the evidence rather than refute it." The report also noted "another case of serious misconduct" involving extortion by the Applicant, which had been "revealed in the course of the investigation," as well as "clear evidence that he has in the past falsified or deliberately overclaimed on travel expenses and almost certainly falsified or forged medical claims." The report's conclusions read, inter alia, as follows:

> "... The Commission, faced with overwhelming evidence of extortion which had been checked and double checked, could not be convinced by any allegation of personal motivation or conspiracy to bring false charges.
>
> ...
>
> Both direct evidence and corroborative evidence overwhelmingly supports the case against [the Applicant].
>
> The Commission of Enquiry felt that a continued employment of [the Applicant] would be incompatible with the code of a conduct of a United Nations staff member."

In a memorandum dated 3 March 1992, the Chairman, UNDP/UNFPA Disciplinary Committee reported to the UNDP Administrator on the conclusions of its review of the allegations against the Applicant. The Committee found, inter alia:

> "...
>
> 1. ... some portion of these statements [against the Applicant] were later recanted and this has cast a doubt as to the motives and intentions of all the parties concerned.

2. There would appear to have been some personality conflicts between [the Applicant] and the other WFP colleagues involved in the case. The Committee believes that the allegations brought against him were possibly tied into this fact ...

3. The Committee also took note of and was puzzled by the fact that the alleged offences, although committed in 1989, were only brought to light in 1991, that is, two years after.

4. Allusion was made to discrepancies in travel claims although no supporting documentation, such as travel authorizations or travel claims, was presented. Hence the Committee considered that this could not be taken into account ...

5. The Committee was concerned to note that the Bangladesh Committee reviewing the allegations was comprised primarily of WFP staff members which should not have been the case, given the prerequisite of impartiality, which is very necessary in such cases.

Given these factors, the Committee has agreed that if there was probable cause, the facts which were presented to it were inconclusive, muddled and occasionally contradictory, rendering it very difficult to prove [the Applicant's] guilt. The Committee therefore recommends that:

i. [The Applicant] be reinstated;
ii. [The Applicant] be transferred to another post without any field responsibility ..."

In a letter dated 12 July 1992, the Resident Representative, UNDP, informed the Applicant, inter alia, as follows:

"The Administrator found that you ... obtained unauthorized payments from third parties ... The Administrator found no evidence of retraction from witnesses of their basic complaints of having paid sums of money to you ... and decided that you are separated from service with effect from today ..."

On 17 May 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision contested is based on muddled and inconsistent evidence and does not take into account letters of retraction submitted by the complainants against the Applicant.

2. The composition of the Commission of Enquiry and its procedures violated the Applicant's right to due process.

3. The charges made against the Applicant were motivated by personal animosity arising from differences of professional opinion.

Whereas the Respondent's principal contentions are:

1. The Applicant was accorded due process and given every opportunity to rebut the allegations against him.

2. The Respondent is free to reject the advice of the Disciplinary Committee, provided his decision is free from prejudice or other extraneous factors.

3. The proceedings were not tainted with prejudice or other extraneous motives.

The Tribunal, having deliberated from 3 to 27 July 1995, now pronounces the following judgement:

I. On 20 March 1991, a telephonic complaint was received stating that the Applicant had obtained bribes from government officials by threatening them with withdrawal or suspension of projects which, by implication, could affect their continued employment. This was followed by preliminary enquiries and the establishment of a Commission of Enquiry, the suspension of the Applicant from duty pending investigation and finally, by convocation of a Disciplinary Committee. The Commission of Enquiry found against the Applicant, but not so the Disciplinary Committee. The Respondent accepted the recommendations of the Commission of Enquiry, rejected those of the Disciplinary Committee and summarily dismissed the Applicant for

serious misconduct. The Tribunal notes that the Respondent, in rejecting the recommendations of the Disciplinary Committee, did not give a proper explanation for doing so. The Tribunal recognizes the wide discretion of the Secretary-General in disciplinary matters. However, because the two bodies convened by the Respondent gave conflicting recommendations, the Tribunal examined all the evidence, in order to determine whether the Respondent's appreciation of the facts, which was the basis for his decision to dismiss the Applicant, was reasonable or not.

II. The Tribunal's review of the evidence is complex because many contradictions of facts, allegations and counter-allegations of malice, intrigues and unworthy motivations are found throughout this case. Moreover, witnesses often seem to be open to being influenced or suborned, and are vague on important details and, not infrequently, are known to each other.

III. The Applicant alleges that the fact of his sister being married to a former President of Bangladesh made him vulnerable in many ways. He claims to be utterly upright, god-fearing, consistently and vehemently professional in giving advice without fear or favour, to enjoy a fine reputation for integrity and competence, and to be indeed above such sordid activities as taking bribes, especially for "pitiable" amounts and from strangers. The argument advanced by the Applicant is that both by nature and by circumstances he is incapable of committing the offences of which he was found guilty.

IV. Be that as it may, one of the Tribunal's main concerns is to ensure that the Applicant was given fair treatment in the process which found him guilty. Thus, the Tribunal has to determine whether the Respondent's action was taken in good faith, untainted by prejudice. It also has to establish whether the Applicant was

given the full protection of the applicable Regulations and Rules. In addition, the Tribunal has to appraise whether the Respondent's action was consistent not only with the proper use of his discretion but also with accepted standards of investigation and with the observance of the Applicant's rights.

V. The preliminary examination by the Head of the Coordination and Programming Unit, who was sent out by WFP to the district of Faridpur to question the local complainants was done, it seems, without the Applicant's direct or official knowledge. Nonetheless, he apparently came to know about it. There is evidence that some of the people who had made complaints against the Applicant subsequently "retracted" any allegation of the Applicant's disloyalty to WFP. The Respondent treats the retractions as not related to the alleged bribe-taking. The Applicant asserts that these retractions can only refer to the allegations of bribe-taking. In any event, he considers these allegations as fabricated and engineered by one of his colleagues and by the Director of Operations, WFP, for their own reasons. The Applicant elaborates at some length on what he believed these reasons were. As for the Director, it was his unpopularity both in the Government of Bangladesh and in WFP, as for the Applicant's colleague, the wish to be promoted. There is very little evidence to sustain these allegations by the Applicant.

VI. The Applicant also questioned the composition of the Commission of Enquiry and in particular, he objected to the inclusion in its membership of a person junior to him in rank and seniority. The Respondent defends this on rather weak grounds i.e. the person objected to was not the Applicant's direct subordinate. The Applicant also points out that the mention of false travel claims etc, was not justified. The Respondent agrees that it should not have been done. Similarly, the Applicant claims that he was deliberately misled by the Respondent about the time-limit for his

appeal (one month instead of two allowed) and the Respondent simply states that it was a human error. On the other hand, all those persons considered by the Applicant as his friends said, on examination, that they were aware of the Applicant's notoriety for accepting bribes, but could not produce any evidence. Only one friend said that the Applicant was not given to any wrong-doing.

VII. These anomalies and contradictions are to be found in every allegation and counter-allegation. In these circumstances, the Respondent concluded, mainly on the basis of the findings of the Commission of Enquiry, that the Applicant was guilty of serious misconduct. There was never any direct confrontation between the Applicant and his three accusers - perhaps there could not be, as they all wished to be "protected" from such untoward consequences as might follow their disclosure. In this connexion, the Tribunal notes the Commission of Enquiry's reference to the evidence before it and its conclusion that:

> "neither in his written statement of ... nor in his meeting with the Commission on 7 May 1991 did [the Applicant] convincingly cast doubt on this key evidence of at least two persons confirming that they had given him bribes."

VIII. On the other hand, apart from the irregularities already mentioned, the Tribunal considers that charging the Applicant with extortion or bribery allegedly committed in 1989 - i.e. two years before the Commission of Enquiry's report - cannot be considered fair. Furthermore the Respondent's argument that the composition of the Commission of Enquiry could not be better balanced is not entirely convincing. Nor has any strong argument been advanced as to why a confrontation between the Applicant and the original three complainants could not be arranged: the conclusion that it might jeopardize the interests of the complainants or might mean negation of the promise of confidentiality given to them are in the realm of speculation.

IX. After an examination of the evidence, the Tribunal is satisfied that the Respondent's use of discretion in dismissing the Applicant can be upheld. However, this case is marked with several irregularities which, while not deflecting the course of justice, entitle the Applicant to some compensation. The Tribunal assesses this compensation to be US$2,000.

X. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant the amount of US$2,000.

(Signatures)

Samar SEN
Vice-President, presiding

Francis SPAIN
Member

Mayer GABAY
Member

Geneva, 27 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary